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Catherine Kurtz Gowen

/Catherine Kurtz Gowen/

May 4, 2010

Type or print name

Signature

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Harry Malyska Confirmation No.: 7175
 Serial No. : 10/582,887
 Filed : 06/18/2007
 Title : Reducing Time to Result for Blood Bank Diagnostic Testing
 Art Unit : 1641
 Examiner : Gailene Gabel

Mail Stop Patent Ext.
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

APPLICATIONS FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE NOTICE
OF ALLOWANCE

Dear Sir:

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) and provided with the Notice of Allowance (April 7, 2010), and in light of the recent ruling in *Wyeth v. Dudas*, No. 2009-1120, slip op. (Court of Appeals for the Federal Circuit) the Applicants submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705. As stated in 37 C.F.R. 1.705(b):

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment

of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.

This request is submitted after the date of mailing of the Notice of Allowance (April 7, 2010) and before payment of the issue fee (July 7, 2010), and complies with the relevant deadline specified in 37 C.F.R. 1.705. Thus, Applicants contend this request is timely.

1. Payment of fee under §1.18(e) or §1.18(f)

Applicants hereby authorizes the Patent Office to charge the fee set forth in §1.18(e) or 1.18(f) and any other fees that may be due to Deposit Account 10-0750.

2. Statement of Facts

Applicants respectfully request that an additional at least (472) days of Patent Term Adjustment be added to the (317) days of additional patent term for Patent Office delay already calculated on PAIR, resulting in a total Patent Term Adjustment of at least 789 days.

2A “A Delay” Calculation

Applicants disagree with the USPTO’s initial determination, which, for purposes of this request and in keeping with the explanation provided in *Wyeth*, Applicants will refer to as the “A delay.” The calculations of the Patent Office Delay and Applicant Delay are described in the Exhibit A (attached). These delays result in an “A delay” patent term adjustment of 492 days.

2B “B Delay” Calculation

37 CFR § 1.702 (b), states:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the

application under 35 U.S.C. 132(b); (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a); (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181; (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or (5) Any delay in the processing of the application by the Office that was requested by the applicant.

The “B delay” resulting from the application pending longer than three years is at least 0 days. The calculation of the B delay is provided in Exhibit A.

2C Request for C, D or E Periods under §1.702

If the above identified patent application was subject to an interference proceeding under 35 U.S.C 135, a secrecy order under 35 U.S.C. 181 or an appeal was filed with the Board of Patent Appeals and Interferences and/or Federal Court applicant(s) request the days of these excluded periods be added to the patent term adjustment (hereinafter, “C, D or E Delay”). Applicant(s) request a patent term adjustment of 297 at least days for the C, D or E delay. The calculation of these delays is provided in Exhibit A (attached).

2D “B Delay” Calculation (plus any C, D or E Delay) Must be Added to the “A Delay” Calculation

This application has yet to issue as a U.S. Patent and nothing has occurred to cut off any further patent term adjustment that would otherwise accrue under 37 C.F.R. §1.702(b). The Patent Office however has **not** included in the Patent Term Adjustment the days related to the “B delay,” which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

The *Wyeth* decision states that “the ‘A period’ and ‘B period’ overlap only if they occur on the same calendar day or days” (*Wyeth*, No. 07-1492, slip op. at 8).

Thus, according to the *Wyeth* decision, Applicants are entitled to both the “A delay” of 809 days and the “B delay” of at least 0 days minus any overlap which occurs on the same calendar days of 20 days plus any C, D or E Delay as of the submission date of this Petition. For these reasons, the Patent Term Adjustment for this case should be at least 789 days.

2D Other Circumstances

As required under 37 C.F.R. §1.705(b)(iii) and (iv)(B), Applicant confirms that, (1) this application is not subject to a Terminal Disclaimer; and (2) except for the Applicant’s delay periods set forth above, there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

Respectfully submitted,

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